

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

SET CAPITAL LLC, et al.,

Plaintiff,

v.

CREDIT SUISSE GROUP AG, et al.,

Defendants.

1:18-cv-02268 (AT) (SN)

**DECLARATION OF HERBERT S. WASHER IN SUPPORT OF  
DEFENDANTS' MEMORANDUM OF LAW IN OPPOSITION TO LEAD  
PLAINTIFFS' AND THE TRUST'S JOINT MOTION FOR CLASS ACTION  
CERTIFICATION**

I, HERBERT S. WASHER, declare under penalty of perjury pursuant to 28 U.S.C. § 1746 as follows:

1. I am a member of the bars of the State of New York and this Court and a Partner at the law firm Cahill Gordon & Reindel LLP, attorneys for Defendants Credit Suisse Group AG, Credit Suisse AG, Credit Suisse International, Tidjane Thiam, and David R. Mathers in the above-captioned consolidated action. I submit this declaration to place before the Court certain documents that are referenced in the accompanying Memorandum of Law in Support of Defendants' Memorandum of Law in Opposition to Lead Plaintiffs' and the Trust's Joint Motion for Class Action Certification ("Defendants' Opposition").

2. Annexed hereto as Exhibit A is a true and correct copy of excerpts of the transcript of the June 7, 2023 deposition of Sudheera Tripuraneni on behalf of the Sudheera Tripuraneni Trust U/A DTD 11/16/2015 (the "Trust").

3. Annexed hereto as Exhibit B is a true and correct copy of excerpts of the transcript of the September 7, 2022 deposition of Phillip Sylvester on behalf of named plaintiff, Set Capital LLC.

4. Annexed hereto as Exhibit C is a true and correct copy of excerpts of the transcript of the August 31, 2022 deposition of Arne Fredly on behalf of named plaintiff, Apollo Asset Ltd.

5. Annexed hereto as Exhibit D is a true and correct copy of collected web articles featured in Appendix A, ranging from 2012 to 2017, all of which were accessed at the web addresses below:

- a. Annexed hereto as Exhibit D-1 is a true and correct copy of Reuters's February 23, 2012 article, *Analysis: Out of control? Volatility ETN triggers risk concerns*, REUTERS (Feb. 23, 2012, 6:06 PM), <https://www.reuters.com/article/us-market-volatility-tvix/analysis-out-of-control-volatility-etn-triggers-risk-concerns-idUSTRE81M2AO20120223>.
- b. Annexed hereto as Exhibit D-2 is a true and correct copy of Financial Times's October 13, 2015 article, *The shadow convexity risk in the machine (and the VIX)*, FINANCIAL TIMES (Oct. 13, 2015), <https://www.ft.com/content/3132399c-04ea-30f4-93ec-90522e9bd090>.
- c. Annexed hereto as Exhibit D-3 is a true and correct copy of Reuters's August 21, 2016 article, *Focus on VIX futures shorts hides the real story*, REUTERS (Aug. 21, 2016, 4:09 PM), <https://www.reuters.com/article/us-usa-stocks-volatility-analysis/focus-on-vix-futures-shorts-hides-the-real-story-idUSKCN10W0US>.
- d. Annexed hereto as Exhibit D-4 is a true and correct copy of ETF's September 2, 2016 article, *Understanding VIX ETFs: Careful What You Wish For*, ETF (Sept. 2, 2016), <https://www.etf.com/sections/blog/understanding-vix-etfs>.

- e. Annexed hereto as Exhibit D-5 is a true and correct copy of the Milton Financial Market Research Institute's December 23, 2016 article, *Mean Reversion Volatility Strategy*, MILTON FINANCIAL MARKET RESEARCH INSTITUTE (Dec. 23, 2016), <https://miltonfmr.com/mean-reversion-volatility-strategy/>.
- f. Annexed hereto as Exhibit D-6 is a true and correct copy of Seeking Alpha's January 19, 2017 article, *Shorting VIX: Whoa Nelly*, SEEKING ALPHA (Jan. 19, 2017, 8:00 AM), <https://seekingalpha.com/article/4037676-shorting-vix-whoa-nelly>.
- g. Annexed hereto as Exhibit D-7 is a true and correct copy of Seeking Alpha's January 19, 2017 article, *Volatility Insights: What Can You Learn From The Big Short Interest In The VIX Futures?*, SEEKING ALPHA (Jan. 19, 2017, 11:05 AM), <https://seekingalpha.com/article/4037938-volatility-insights-what-can-you-learn-from-big-short-interest-in-vix-futures>.
- h. Annexed hereto as Exhibit D-8 is a true and correct copy of Seeking Alpha's January 24, 2017 article, *Raoul Pal Warns Current Levels Of Speculative VIX Short Positions: "Reminds Me Of Portfolio Insurance In 1987,"* SEEKING ALPHA (Jan. 24, 2017, 11:23 AM), <https://seekingalpha.com/article/4038973-raoul-pal-warns-current-levels-of-speculative-vix-short-positions-reminds-me-of-portfolio>.
- i. Annexed hereto as Exhibit D-9 is a true and correct copy of Seeking Alpha's February 22, 2017 article, *Free Money? Explaining The VIX Term Structure*, SEEKING ALPHA (Feb. 22, 2017, 12:27 PM), <https://seekingalpha.com/article/4048360-free-money-explaining-vix-term-structure?hasComeFromMpArticle=false>.
- j. Annexed hereto as Exhibit D-10 is a true and correct copy of Heisenberg Report's April 29, 2017 article, *Here's The "Not Unthinkable" Nightmare Scenario For Short VIX*

*Strats*, HEISENBERG REPORT (Apr. 29, 2017), <https://heisenbergreport.com/2017/04/29/heres-the-not-unthinkable-nightmare-scenario-for-short-vix-strats/>.

- k. Annexed hereto as Exhibit D-11 is a true and correct copy of Seeking Alpha's May 2, 2017 article, *Is XIV Bulletproof Or Will It Crater When The Time Is Right?*, SEEKING ALPHA (May 2, 2017, 6:43 AM), <https://seekingalpha.com/article/4067701-is-xiv-bulletproof-will-crater-when-time-is-right>.
- l. Annexed hereto as Exhibit D-12 is a true and correct copy of Financial Times's May 4, 2017 article, *Trading volatility? Good luck catching that sharp knife*, FINANCIAL TIMES (May 4, 2017), <https://www.ft.com/content/a8589eac-30e0-11e7-9555-23ef563ecf9a>.
- m. Annexed hereto as Exhibit D-13 is a true and correct copy of Financial Times's May 4, 2017 article, *Low volatility S&P shakes the magic money tree*, FINANCIAL TIMES (May 4, 2017), <https://www.ft.com/content/5ad9b0ee-30d6-11e7-9555-23ef563ecf9a>.
- n. Annexed hereto as Exhibit D-14 is a true and correct copy of Seeking Alpha's May 15, 2017 article, *Investing In The VIX During Extended Periods Of Low Volatility*, SEEKING ALPHA (May 15, 2017, 2:57 PM), <https://seekingalpha.com/article/4073369-investing-in-vix-during-extended-periods-of-low-volatility>.
- o. Annexed hereto as Exhibit D-15 is a true and correct copy of Heisenberg Report's May 16, 2017 article, *Investigating The Market's "Nightmare Scenario,"* HEISENBERG REPORT (May 16, 2017), <https://heisenbergreport.com/2017/05/16/investigating-the-markets-nightmare-scenario/>.

- p. Annexed hereto as Exhibit D-16 is a true and correct copy of Seeking Alpha's May 31, 2017 article, *A Quick Volatility Analysis*, SEEKING ALPHA (May 31, 2017, 9:57 AM), <https://seekingalpha.com/article/4077626-quick-volatility-analysis>.
- q. Annexed hereto as Exhibit D-17 is a true and correct copy of Seeking Alpha's June 13, 2017 article, *Vicious VIX: Jason Miller Made \$53,000, But Larry Tabb Got Bilked*, SEEKING ALPHA (June 13, 2017, 11:40 AM), <https://seekingalpha.com/article/4081097-vicious-vix-jason-miller-made-53000-larry-tabb-got-bilked>.
- r. Annexed hereto as Exhibit D-18 is a true and correct copy of CNBC's July 7, 2017 article, *Money is rushing into "the most dangerous trade in the world,"* CNBC (July 7, 2017, 2:48 PM), <https://www.cnbc.com/2017/07/07/money-is-rushing-into-the-most-dangerous-trade-in-the-world.html>.
- s. Annexed hereto as Exhibit D-19 is a true and correct copy of MarketWatch's July 29, 2017 article, *Dangerous Game: Shorting the VIX*, MARKETWATCH (July 29, 2017, 1:29 AM), [https://www.marketwatch.com/articles/dangerous-game-shorting-the-vix-1501306194?mod=search\\_headline](https://www.marketwatch.com/articles/dangerous-game-shorting-the-vix-1501306194?mod=search_headline).
- t. Annexed hereto as Exhibit D-20 is a true and correct copy of Reuters's August 3, 2017 article, *U.S. stock options hedging picks up in the midst of record calm*, REUTERS (Aug. 3, 2017, 6:20 PM), <https://www.reuters.com/article/us-usa-stocks-volatility/u-s-stock-options-hedging-picks-up-in-the-midst-of-record-calm-idUSKBN1AJ328>.
- u. Annexed hereto as Exhibit D-21 is a true and correct copy of Seeking Alpha's October 18, 2017 article, *Praemonitus, Praemunitus: Modeling Out The Likelihood Of A 1-Day 80% Drop In XIV*, SEEKING ALPHA (Oct. 18, 2017, 3:04 PM),

<https://seekingalpha.com/article/4114397-praemonitus-praemunitus-modeling-out-likelihood-of-1-day-80-percent-drop-in-xiv>.

- v. Annexed hereto as Exhibit D-22 is a true and correct copy of Seeking Alpha's October 24, 2017 article, *If You're Long XIV, Check Your Allocation*, SEEKING ALPHA (Oct. 24, 2017, 10:21 AM), <https://seekingalpha.com/article/4115754-long-xiv-check-your-allocation>.
- w. Annexed hereto as Exhibit D-23 is a true and correct copy of Quartz's January 17, 2018 article, *How to bet on stock volatility*, QUARTZ (Jan. 17, 2018), <https://qz.com/1177950/how-to-bet-on-stock-volatility-and-why-thats-a-bad-idea>.

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.

Dated: June 23, 2023  
New York, New York

/s/ Herbert S. Washer  
Herbert S. Washer